

Report and Recommendations of the Select Committee on Indian Affairs

November 1980



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REPORT AND RECOMMENDATIONS

OF THE

SELECT COMMITTEE ON INDIAN AFFAIRS

A REPORT TO THE FORTY-SEVENTH LEGISLATURE

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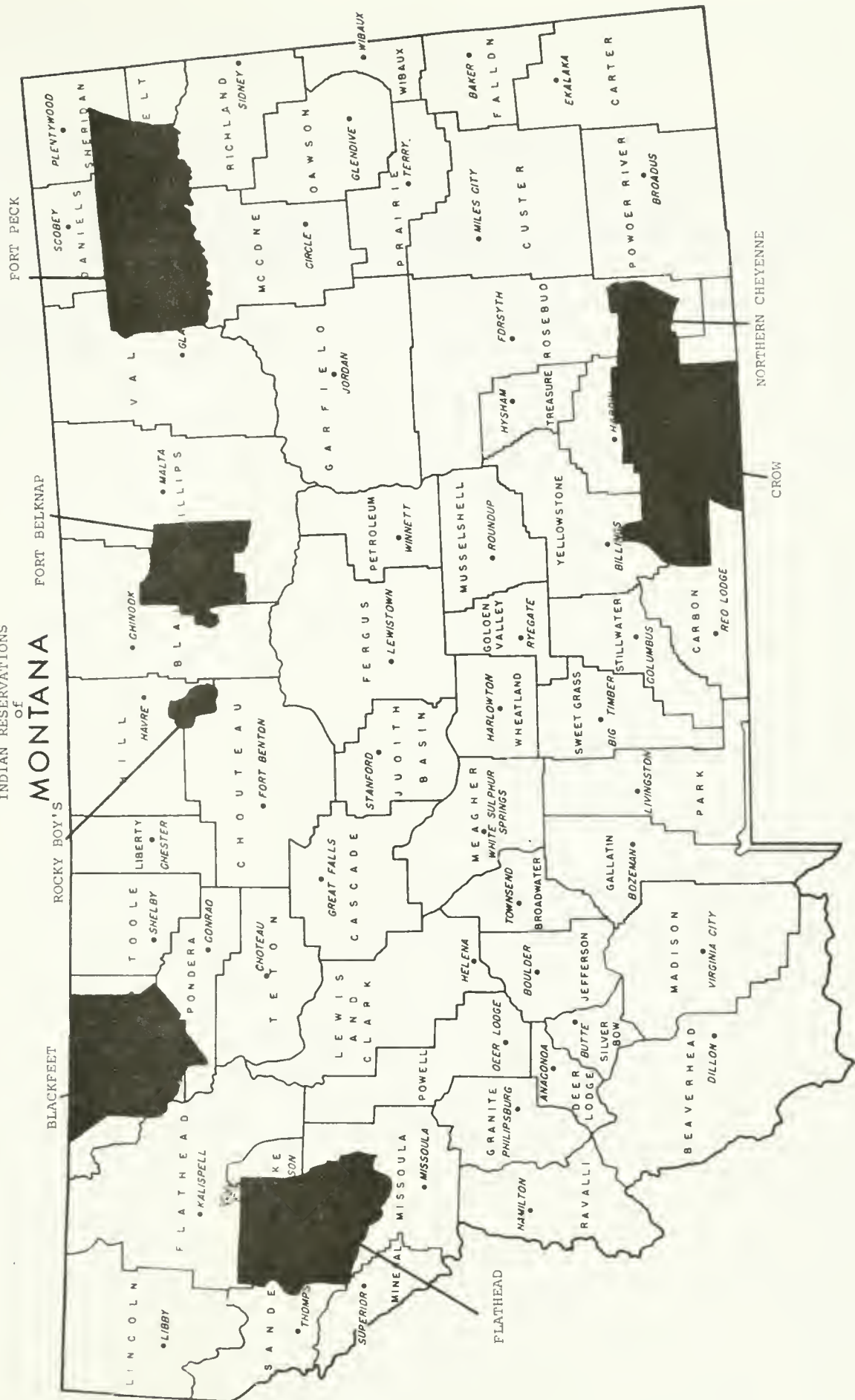
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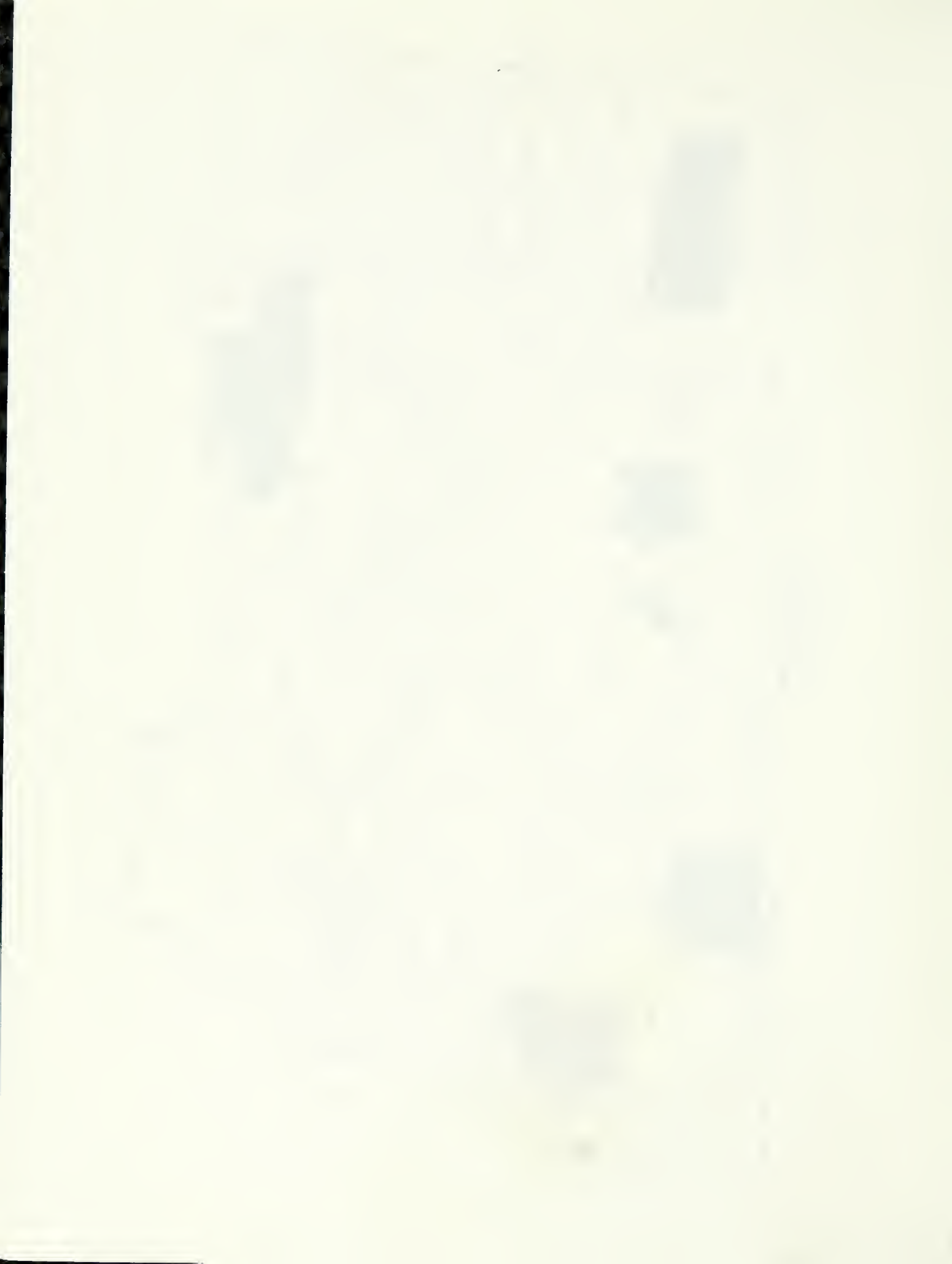
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INDIAN RESERVATIONS

of MONTANA





The Select Committee on Indian Affairs recommends that the 1981 Montana Legislature:

1. Enact a bill to authorize the state and its political subdivisions to enter into cooperative agreements with Indian tribes located in Montana; and
2. Enact a bill to create a permanent legislative Committee on Indian Affairs.



SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE TO APPOINT A SELECT COMMITTEE ON INDIAN AFFAIRS.

WHEREAS, there are seven Indian reservations and numerous landless Indians in Montana; and

WHEREAS, the various tribes have treaties with the United States; and

WHEREAS, this situation gives rise to extremely complex jurisdictional, social, and philosophical questions in virtually all subject areas including law enforcement, water rights, pollution control, natural resources, health, social services, education, and taxation which, in turn, produce tension and conflict in tribal/state and Indian/non-Indian relations; and

WHEREAS, Congress, as the ultimate authority on relations with the Indian tribes, has not acted in a decisive manner to resolve these questions and is unlikely to do so in the foreseeable future; and

WHEREAS, jurisdictional litigation on a case-by-case basis is expensive to the state, tribes, and private parties.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President of the Senate and the Speaker of the House appoint four members of the Senate and four members of the House, equally bipartisan, to serve on a select legislative committee on Indian affairs.

BE IT FURTHER RESOLVED, that the committee seek the opinions and information of Indian tribes, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies to gain insight into Indian problems in Montana.

BE IT FURTHER RESOLVED, that the committee study the Montana statutes relating to participation in programs and interlocal agreements by political subdivisions and seek input from all interested persons in order to determine whether it would be workable and desirable to specifically include Indian tribes within the purview of any of those statutes.

BE IT FURTHER RESOLVED, that the committee study the possibility of establishing other state legislative plans or mechanisms which would allow and encourage tribal/state or tribal/local government cooperation or otherwise go toward resolving Indian problems in Montana.

BE IT FURTHER RESOLVED, that the Legislative Council provide staff to assist the committee.

BE IT FURTHER RESOLVED, that the committee report its activities, findings, recommendations, and any proposed legislation to the 47th Legislature.

Approved March 20, 1979.



INTRODUCTION TO AND BACKGROUND OF THE COMMITTEE

The Select Committee on Indian Affairs for the 1979-80 interim was created by SJR 1 in the 46th Legislature to continue the work of the previous interim's Committee on Indian Legal Jurisdiction. That Committee, during its two-year existence, held two meetings with tribal members. The first was a poorly attended meeting and was considered by most to be unsuccessful. The Indian representatives expressed grave doubts as to the state's role in Indian affairs, and no consensus from the Indian community could be reached as to whether or not the Committee should hold public hearings. The second meeting, however, provided the Committee on Indian Legal Jurisdiction with strong encouragement for continuing the incipient dialogue between the state and the tribes. The Committee held the meeting on October 18, 1978; seven Committee members, all but one tribal chairman, and other interested persons attended it. Participants made suggestions as to areas for a future committee's study, and, according to the Committee's final report to the 46th Legislature, "the tribal leaders responded overwhelmingly in favor of continuation of contacts and discussions with a state legislative committee." Thus, the Select Committee on Indian Affairs was proposed as the result of an unexpected and timely demonstration of support from the Indian community.

It is important to recognize that the area of Indian affairs historically has been in the federal domain. Congress is the ultimate authority over the tribes. What little jurisdiction the states may exercise either has been conferred specifically by Congress, or has been interpreted by the courts as belonging to the states. Concurrently, a deep-rooted mistrust and highly charged emotions have characterized most state-tribal relations.

In recent years, however, the people of many Indian-populated states have observed a gradual trend in state-tribal relations toward the pursuit of cooperation rather than confrontation. The states and the tribes slowly are recognizing that, although there are some areas in which they may never agree, they do have many common interests and goals. It has been the purpose of the Montana Select Committee on Indian Affairs to help define areas of common interest, with a hope that litigation will be forestalled and the peoples of diverse cultures will mutually benefit from the ensuing dialogue.

In Montana, there are seven Indian reservations, 12 tribes, and a total tribal enrollment of 41,768.¹ The Committee has met on or near each of the reservations which, with their corresponding official tribes within their boundaries, include: the Blackfeet Reservation (Blackfeet); Flathead Reservation (Confederated Salish-

¹American Indian Tribes of Montana and Wyoming, U.S. Department of the Interior, Bureau of Indian Affairs, Planning Support Group, Billings, October, 1978, p. 1.

Kootenai); Crow Reservation (Crow); Fort Belknap Reservation (Gros Ventre-Assiniboine); Fort Peck Reservation (Assiniboine-Sioux); Northern Cheyenne Reservation (Northern Cheyenne); and the Rocky Boy Reservation (Chippewa-Cree). In addition, there are numerous landless Indians in the state, which include members of the Little Shell Tribe of Chippewa.

The Select Committee on Indian Affairs has progressed slowly but steadily. These features must be considered as inherently sound in the initiation of any state-tribal dialogue. Most important, the Committee has observed the gradual development of a mutual trust because of the continuity it has provided. Indians and non-Indians are becoming familiar with each other's names and faces. The Committee's intentions and the spirit in which it is functioning are being accepted by the Indian communities. These communities are regarding the Committee as a sounding board, a means for education and understanding, and a means for developing cooperation and coordination of disparate political entities. Both the tribes and the Committee -- and ultimately the legislature and the state -- are gaining from such communication.

Committee members believe the State's Coordinator of Indian Affairs, Merle Lucas, best characterized the progress made and set the challenge for the future when he said: "This Committee has certainly built the foundation in state-tribal relations. I challenge it to build the rest of the structure."

During the interim, the Committee primarily focused on the development of two pieces of legislation. This report describes the inception of the Committee bills, the considerations made by the Committee in drafting the bills, and the public's reaction to the bills. The Committee wishes to thank the many people who demonstrated their interest in both the Committee's work and the promotion of state-tribal cooperation in Montana during this interim study.

SUMMARY OF COMMITTEE DELIBERATIONS

The Committee held six full-committee meetings during the interim: all but the first and final took place in the Montana Inter-Tribal Policy Board's (ITPB) conference room in Billings. In addition, a subcommittee held a meeting on cross-deputization, and three subcommittees conducted six hearings on or near the reservations. The reservation hearings were of particular significance because such hearings had been an unaccomplished goal of the previous interim's Committee on Indian Legal Jurisdiction, and because the hearings were the first instances in Montana in which a legislative committee met with all of the Indian communities individually and locally.

The Committee held its organizational meeting in June of 1979. The Committee discussed the highly sensitive nature of state-tribal relations and established that, because of that sensitivity, it would work in clearly defined areas in which cooperation could be achieved. The Committee defined certain areas as "off limits": sovereignty (an area of federal concern); water rights (an area to be reviewed by the Water Resources and Adjudication Committee); and any area currently under litigation.

The Committee held its second meeting on August 10, 1979. In addition to the Committee members and staff, 15 persons were present, including representatives from five reservations. The purpose of the meeting was to receive tribal input regarding subjects the Committee might study during the interim. Participants suggested the following topics: fishing and hunting permits; aerial hunting; cooperative agreements; cross-deputization; Indian representation in state government; cigarette taxation; liquor tax revenue returns to the reservations for the purpose of establishing alcohol treatment centers; reapportionment; extradition; and repurchase of state land within tribal boundaries. The Committee established the subject of cross-deputization as its highest priority. It remained the Committee's primary focus, within the broader realm of cooperative agreements, throughout the interim. The Committee also informed the tribes that it would act as a sounding board for problems with other government agencies. Finally, the tribes expressed concern about the Governor's "Legal Jurisdiction Project," which they believe is antagonistic to their interests.

The Committee held its third meeting in October, 1979; 24 people, other than legislators and staff, attended it. Among those present were representatives from four tribes, the Bureau of Indian Affairs (BIA), state agencies, and various county sheriffs and commissioners. The outcome of this meeting was the establishment of a subcommittee to study the area of cross-deputization, with hopes of producing legislation to facilitate binding agreements.

The Subcommittee on Cross-Deputization met in Billings on February 1, 1980. It reviewed a questionnaire sent to tribal, county, and city law enforcement agencies regarding the past and present status of cross-deputization on and near the reservations. Highlighted concerns of both Indians and non-Indians were liability insurance coverage and respective differences in officer training. The Subcommittee also instructed the staff to draft a bill authorizing state agencies to enter into cooperative agreements with the tribes, without limiting agreements to cross-deputization, and to draft a sample cross-deputization agreement between fictitious tribal and state law enforcement agencies.

The full Committee held its fourth and most substantive meeting on April 18, 1980. It unanimously approved the draft bill, the State-Tribal Cooperative Agreements Act (Appendix A), with only a minor amendment, and directed the staff to draft another bill creating a permanent legislative Committee on Indian Affairs (Appendix B). The Committee established three subcommittees on a geographic basis for the purpose of conducting public hearings on or near the reservations. Of note, Tom Whitford, ITPB, submitted a copy of a Board resolution mandating itself to work with the legislative Indian Affairs Committee on legislation authorizing cross-deputization agreements (Appendix C).

During the summer of 1980, the subcommittees conducted six hearings on five reservations -- the Crow, Northern Cheyenne, Flathead, Fort Peck, and Blackfeet. The sixth hearing, held in Havre, included participants from both the Rocky Boy's and Fort Belknap Reservations, as these reservations are in close proximity to each other. The subcommittees sent invitations to tribal officials, tribal, county, and city law enforcement officers, city and county attorneys, county commissioners, members of relevant state agencies, local legislators, and others. Attendance at the hearings ranged from approximately 14 in Havre to over 40 on the Blackfeet and Northern Cheyenne Reservations.

Formal topics for discussion at the hearings were the two bills drafted by the Committee and items for its future consideration. In addition, most subcommittees acted as sounding boards for the Indian communities, and dialogue at times ranged far from the specific agenda, occasionally becoming somewhat heated. Participants probably would concur, however, that they found such diversions and exchanges to be extremely productive, by allowing two groups of people, unfamiliar with each other's cultures, political systems, and immediate interests, to become acquainted in a broader sense than defined in the subcommittee agendas. In general, the Indian communities were supportive of the two bills.

The Select Committee on Indian Affairs held its final meeting on September 12, 1980. The Committee reviewed and implemented many of the recommendations made by hearing participants, and put the bills into their final forms. The Committee unanimously supports both bills.

OVERVIEW OF THE BILL TO AUTHORIZE PUBLIC AGENCIES TO ENTER INTO
COOPERATIVE AGREEMENTS WITH INDIAN TRIBES LOCATED IN MONTANA

Agreements, or compacts, are a formal acknowledgement and product of state-tribal cooperation. They are an alternative to lawsuits, and a solution, on the local level, to the problems created by the limitations inherent in congressional action. The need for agreements becomes increasingly greater, as the responsibilities of both tribal and state governments become increasingly more complex.

The existence of agreements is not new, despite history's traditional emphasis on state-tribal confrontation. For example, Walter Hammermeister, Sheriff of Pondera County, related to a subcommittee his experiences with cross-deputization agreements over 17 years ago. Yet, in Montana and elsewhere, certain features distinguish today's agreements from those in the past: the frequency in which the parties are negotiating them, their sophistication, and the fact that state committees, such as this one, and multi-state organizations, such as the Commission on State-Tribal Relations, are studying them.

The purpose of the Committee's State-Tribal Cooperative Agreements Act is to provide statutory authority for the state and its political subdivisions to enter into agreements with the tribal governments in any areas in which the parties desire them.¹ Currently, Montana laws authorize only three governmental entities to enter into cooperative agreements with the tribes. These involve certain branches of the Department of Institutions, the Department of Fish, Wildlife, and Parks, and the trustees of the school districts. However, the Committee has discovered through its work that possibilities for agreements are endless. Examples of agreements discussed by the Committee and interested persons include: cross-deputization, extradition, hunting and fishing laws, game management, cigarette taxation, clean air standards, water quality standards (as opposed to water rights), and state services such as alcohol treatment programs, social welfare programs, and mental health facilities.

In drafting the bill, the Committee knew it was essential to recognize the individuality of the tribes. Thus, the bill provides a general framework and minimal, although necessary, guidelines for the construction of agreements. Such general guidance flexibly allows the parties to incorporate their own particular needs into the compact. These needs naturally will vary according to the reservation, the state agency, and the subject matter of the agreement.

¹Note that SJR 1, which establishes the Committee, mandates it to "study the possibility of establishing...plans or mechanisms which would allow and encourage tribal/state or tribal/local government cooperation."

Another significant element of the Committee bill is that there is no mandate to any party to enter into an agreement. It merely grants the state and its political subdivisions the authority to form such a compact. It must also be recognized that, since the state does not have jurisdiction over the tribes, this bill gives authority to enter into agreements to the state alone. The tribes are granted authority to enter into agreements through their own constitutions, through the Indian Reorganization Act of 1934, 25 USC §476, and through other Congressional authorization.

The following is a general outline of the bill's major features. The Committee bill:

- authorizes the state and its political subdivisions to enter into cooperative agreements with the tribal governments to perform any functions that the parties to the agreement are authorized by law to perform. [Section 3(1)]
- specifies certain required provisions in agreements, in general, and in agreements involving law enforcement. These required provisions include such examples as the agreement's duration, the manner of its administration, or, when involving law enforcement, respective liability and minimum insurance requirements. [Section 4]
- clearly delineates that no agreement may alter the jurisdiction exercised by the state of Montana, the tribal governments, or the U.S. Congress. This provision was placed in the bill to make absolutely clear the well-established principles that the state does not have authority to change jurisdiction, nor can jurisdiction be altered through an agreement. [Section 10]
- requires the submission of the agreement to the Attorney General, who may disapprove the agreement only for technical, as opposed to substantive, reasons. [Section 5]
- requires that the agreement be filed with specific appropriate officials, such as the state Attorney General and the Secretary of the U.S. Department of the Interior.
- allows the parties to the agreement to revoke the agreement upon six months' notice, unless a different period of time is specified in the agreement. [Section 8]
- authorizes any public agency entering into an agreement to appropriate funds or to provide other materials or personnel necessary for the proper performance of the agreement. [Section 9]
- amends and repeals present statutes pertaining to cooperative agreements with Indian tribes, in order that all agreements are consistent with this umbrella bill. [Sections 11-13]

If the state and the tribes continue to receive legislative support for cooperative agreements -- in addition to encouragement from multi-state organizations, such as the Commission on State-Tribal Relations -- agreements, in all likelihood, will continue to be developed more frequently in the future.

Why is this bill needed?

Currently, except in the three previously mentioned areas, Montana statutes do not authorize state-tribal agreements. Yet agencies have entered into them -- primarily on an informal, and sometimes verbal, basis. If someone were to challenge an agreement in court, the court conceivably could declare it to be invalid. This is a hypothetical assumption, as the Committee is unaware of any agreements that have been overturned. In fact, an agreement in Minnesota involving hunting and fishing, which was passed and ratified by the state legislature, was tested in court three times by non-Indians; the court upheld its validity each time.² In contrast, however, the assistant director of the Washington Department of Fisheries, an agency that has entered into agreements with Indian tribes without legislative authorization, stated at a hearing in Helena: "Our authority to develop agreements with tribes without special [legislation] is constantly being questioned by the Attorney General." He continued to say, "I think to clarify that situation...would be worthwhile," and noted that Montana's enabling legislation was an "interesting" approach to the problem.³

At present, without a statement from Congress (this may be forthcoming, as discussed later in this chapter), or more court precedents, the unpredictable nature of Indian law precludes there being an absolute guarantee that state enabling legislation would legitimize all cooperative agreements. However, the Minnesota cases, the only ones available, are encouraging to those parties in support of agreements. In general, unless state enabling legislation authorized the transfer of jurisdiction -- which only the federal government can authorize, and which is prohibited under this Committee bill -- such legislation probably would validate cooperative agreements.

This conclusion is supported by the U.S. Senate Select Committee on Indian Affairs in its report of September, 1978, regarding S.2502 (presently S.1181) -- the congressional bill after which Montana's enabling act was patterned. The report reads:

In the context of the tribal/State relationship, any actual transfer of jurisdiction involving the application or enforcement by one political body of the civil, criminal, or regulatory laws of the other would seem to require congressional

²Hearing on Cooperative Agreements Involving Environment, Natural Resources, and Wildlife Management Issues, Helena, May 28-29, 1980, sponsored by the Commission on State-Tribal Relations, p. 28.

³Ibid., p. 26.

consent. On the other hand, compacts or agreements between States and tribes which call for the mutual or cooperative administration of services or concurrent, joint application of uniform laws probably does not require Federal involvement or congressional consent.⁴

In addition to the general uncertainty as to an agreement's validity without legislative authorization is a more specific concern about the powers of local governments to form agreements. The Montana Constitution, Article XI, Section 4, provides that a local government unit without self-government powers has the "powers provided or implied by law." In contrast, a local government unit with self-government powers may "exercise any power not prohibited" by the Constitution, law, or charter, as per the Montana Constitution, Article XI, Section 6, and Section 7-1-101, MCA. This language, when analyzed comparatively, may imply that those local forms of government without self-government powers are prohibited from doing anything they are not specifically authorized to do. Such a theory has been referred to as "Dillon's Rule".⁵

Even with this rule, however, the courts have great latitude in defining the extent of a local government unit's powers. The touchstone for interpretation seems to be whether or not the power exercised is "incidental and necessary" to the performance of the duties required by statute.

In perhaps a cursory conclusion, these ambiguous definitions and theories reveal that no definitive rule exists as to the power of a non-self-governing local government unit to enter into an agreement. Therefore, the Committee finds specific legislative authority for political subdivisions of the state to enter into agreements with the tribes, as found in the State-Tribal Cooperative Agreements Act, to be a sound precautionary measure.

An additional factor supporting adoption of the State-Tribal Cooperative Agreements Act is that the bill acts as a safeguard to the parties by requiring agreements to contain certain prudent provisions. Thus, an agreement involving law enforcement must delineate respective liability insurance responsibilities before it will be approved. Without this legislative requirement, a cooperative agreement might omit this provision. The ramifications of such an omission could be severe, and could undermine one of the intents of cooperative agreements, that of forestalling litigation.

⁴U.S. Senate Select Committee on Indian Affairs, Report No. 95-1178, p. 4.

⁵Jerry R. Holloron, Local Government, Montana Constitutional Convention Study, Report No. 16, 1971-1972, p. 2.

Finally, the bill, if enacted, would provide the state and the tribes with encouragement to enter into agreements. Since the agreements are optional, rather than mandatory, it can be assumed that agreements will be mutually beneficial to the parties. The Committee also hopes that the negotiation and existence of cooperative agreements, itself, will enhance the rapport between the state and the tribes.

Local Input

Participants at the public hearings held during the summer of 1980 had mixed, although generally favorable, reactions to the State-Tribal Cooperative Agreements Act. At most hearings, it was immediately necessary for the Committee to dissipate certain fears: the fear that the bill attempted to alter present jurisdiction or infringe upon the Indians' sovereignty; and the fear that agreements would be mandatory, or that they would be imposed uniformly on the tribes. Once the Committee relieved the public of these fears, the majority of the participants -- for reasons already listed -- indicated their support for the bill.

Nonetheless, opponents to the bill did exist, and some participants had objections to specific facets of the bill, while supporting the overall concept. Such objections included: the cost of agreements; confusion regarding section 12 of the bill, which amends a present statute pertaining to agreements with the Flathead Indians; the uncertainty as to how agreements will be enforced; the effectiveness of the bill, as it does not allow jurisdiction to be enlarged or diminished; the necessity of the bill, because agreements presently do exist -- will "people...look more and more to the letter of what is written than to the spirit of what it is trying to accomplish?";⁶ and the fear that if abuses of the agreement exist, non-Indians have no avenues for redress of their grievances because they do not have a voice in tribal government.

Cross-deputization

The example of an agreement most frequently discussed throughout the Committee's meetings and at the hearings was cross-deputization. Cross-deputization is an arrangement whereby officers of one law enforcement agency are deputized on a limited basis to make arrests in cases not normally within their jurisdiction, or to hold an offender until an officer of the appropriate jurisdiction arrives to formally make an arrest. It must be noted that cross-deputization

⁶Jim Nelson, Glacier County Attorney, minutes of the hearing of the Select Committee on Indian Affairs' Subcommittee on the Blackfeet Reservation, Browning, July 31, 1980, p. 2.

(or the conference of arrest powers) does not mean the enlargement or diminishment of federal, state, or tribal jurisdictions.⁷

The need for cross-deputization of law enforcement officers arises because of the many problems and loopholes existing in the present jurisdictional system. For example, the reservations extend over large geographic areas in Montana, and the tribal police may be more accessible than the county sheriff to quell a disturbance, although the offender may be a non-Indian and not within the jurisdiction of the tribal police.⁸ Another loophole is a situation in which a tribal police officer stops a speeding vehicle -- without knowing whether the driver is an Indian or not -- and has to release the non-Indian offender because, again, the tribal officer does not have jurisdiction. These examples of inefficient and ineffective law enforcement administration are of concern to society at large.

Although supportive of cross-deputization agreements, the tribal law enforcement officers expressed, throughout the Committee meetings and hearings, what they believed to be two major hindrances to cross-deputization. First, Montana does not recognize the excellent training received by many tribal officers at the federal academy in Brigham City, Utah. Second, Montana has no mechanism for certifying tribal law enforcement officers.

Technically, the tribes are only partially correct in their analysis of these obstacles. Montana does not give formal recognition to the tribal officers for their out-of-state training; nor will the state certify tribal officers.⁹ However, neither of these conditions are prerequisites to cross-deputization, as discussed below.

⁷Criminal jurisdiction in Indian country is exercised by federal, tribal, or state governments depending on the type of crime and the race of the offender and the victim. It is an extremely complex subject, constantly being interpreted by the courts and thus lacking predictability. For an easily understood and summary explanation of Indian jurisdiction, refer to Robert Pyfer's The Administration of Criminal Justice and the American Indian, Montana Legislative Council, Spring, 1978.

⁸In the case of Oliphant v. Suquamish Indian Tribe, 98 S. Ct. 1011 (1978), the U.S. Supreme Court held that "Indians do not have criminal jurisdiction over non-Indians absent affirmative delegation of such power by Congress."

⁹The only reference to the transfer of out-of-state credit for law enforcement training in Montana law is found in the Administrative Rules of Montana. § 23.14.405(3)(b), ARM, provides that "peace officers with out-of-state experience and training and (who) are employed by Montana law enforcement agencies" (emphasis added) must pass an equivalency test and complete the Legal Training School at the Bozeman Academy in order for their credit to be transferred. This section of law has been applied to tribal officers seeking employment with the county, for example. However, it would not pertain to cross-deputized officers, who would not be "employed by Montana law enforcement agencies." (continued on page 13)

To begin with, Montana currently has no statutes pertaining to cross-deputization, and therefore has no minimum requirements for cross-deputized officers. Secondly, the Committee's bill -- in its section on requirements for law enforcement agreements -- makes no reference to state certification. Thus, this is not a prerequisite. Lastly, the bill addresses the subject of training, but merely requires, in section 4, subsection (8)(a), that an agreement involving law enforcement specify "the minimum training standards and qualifications of law enforcement personnel." Such language implies that the parties entering into the agreement shall stipulate their own training standards and qualifications. In conclusion, accreditation and state certification for tribal officers technically are irrelevant to the implementation of cross-deputization agreements.

Nonetheless, the Committee recognizes that the tribes may be correct in their analysis from a practical viewpoint. County and city law enforcement agencies presently may be reluctant to cross-deputize tribal police because they have out-of-state training and are not state-certified. If these agencies continue to be reluctant to cross-deputize, for the reasons named by the tribes, the Committee may have to take actions in the future to remove these obstacles. Hence, the Committee encourages tribal, state, county, and city entities to continue to provide it with feedback regarding the practical application of agreements. At present, however, the Committee believes that its bill removes all the legal impediments to cross-deputization and other agreements. It hopes that, through public education, the "obstacles" mentioned above will no longer be perceived as such.

Congressional Action: S.1181

The Montana Indian Affairs Committee patterned the State-Tribal Cooperative Agreements Act after U.S. Senate bill S.1181, the Tribal-State Compact Act of 1980 (Appendix D). As stated by the bill's sponsor, Senator Dennis DeConcini of New Mexico, "Enactment of S.1181 would provide the necessary clarification and certainty" regarding the state's authority to enter into agreements with the tribes.¹⁰

⁹(continued). A similar lack of applicability exists in the area of certification. Certification is required within one year of employment as a Montana peace officer. Yet, § 23.14.404(2), ARM, states: "to be eligible for the award of a certificate, each peace officer must be a fulltime, paid and sworn peace officer employed by a law enforcement agency as defined by the Board of Crime Control." Thus, tribal officers do not come under this definition and cannot be certified by the state of Montana.

¹⁰Hearing before the U.S. Senate Select Committee on Indian Affairs, Ninety-Sixth Congress, on S.1181, September 1, 1979, Phoenix, p. 2.

S.1181 authorizes state-tribal cooperative agreements without federal intervention. By virtue of the fact that it is a Congressional bill, it has a larger scope than the Montana bill in certain areas. For example, it authorizes agreements that involve a transfer of jurisdiction or provide for concurrent jurisdiction of state and tribes. Furthermore, the bill allows the Secretary of the Interior to provide funding to the parties to an agreement for its implementation. Lastly, the bill contains a provision for judicial enforcement of agreements.

The original version of the Congressional bill, S.2502, was introduced by Senator Abourezk in February, 1978. It passed the Senate but died in the House Committee on Interior and Insular Affairs. In the most recent session, S.1181 unanimously passed the Senate on May 30, 1980. On June 3, 1980, it again was referred to the House Interior and Insular Affairs Committee. The Committee did not take any action on the bill before Congress recessed in October, 1980.

The Montana Select Committee on Indian Affairs has expressed its support for S.1181 to the Congressional Select Committee on Indian Affairs.

Commission on State-Tribal Relations

The Commission on State-Tribal Relations, sponsored by the National Conference of State Legislatures, the National Congress of American Indians, and the National Tribal Chairmen's Association, has been in existence since late 1978. Half of its 14 members are tribal leaders, and half are state representatives. The Commission is the first national organization to approach the subject of intergovernmental cooperation on the state-tribal level.

The Commission has functioned as a resource organization, and, in that capacity, was very helpful to the Montana Committee. It conducted five public hearings regarding state-tribal cooperative agreements, one of which was held in Helena, and compiled a report regarding the existence of past and present agreements in Indian-populated states. Pending the outcome of grant proposals for funding, the Commission hopes to publish a second report containing guidelines for the negotiation and construction of agreements. Another project proposed by the Commission is to conduct local workshops for parties considering the implementation of agreements.

Conclusion

The Select Committee on Indian Affairs recognizes that, even with passage of the State-Tribal Cooperative Agreements Act, many obstacles exist that state agencies and tribal governments will confront and need to overcome before they formalize cooperative agreements. Fears and mistrust on the part of both the state and the tribes are longstanding and are unlikely to suddenly dissolve.

For these reasons, the Committee encourages the parties to successful agreements to maintain dialogue after the agreement is formalized, rather than ceasing communication at that point. Lastly, the Committee realizes that some subjects are unsuitable for agreements, and that litigation has a necessary and appropriate role in defining certain unanswered questions.

Despite the above words of caution, the Committee is excited and encouraged by what it perceives to be a positive and productive exchange of ideas and information between the state and the tribes. The Committee anticipates that, because of this exchange, state-tribal cooperation will be strengthened in many areas. The Committee also believes that the State-Tribal Cooperative Agreements Act will be an effective device for implementing intergovernmental agreements and making them statutorily valid and binding.

OVERVIEW OF THE BILL TO CREATE
A STATUTORY COMMITTEE ON INDIAN AFFAIRS

It has been reiterated many times in this report that a newfound dialogue has begun in state-tribal relations, an area rooted in mistrust, poor communication, and lack of understanding. One cannot expect a mistrust, perpetuated by both the state and the tribes for over a century, to be dispelled in a few years. Thus, at its fourth meeting in April, 1980, the Select Committee on Indian Affairs instructed its staff to draft a bill creating a permanent legislative Committee on Indian Affairs, in order that state-tribal communication may continue on an ongoing basis.

In addition to its organizational provisions, the bill for a permanent committee assigns, in section 8, the following duties to the committee:

- to serve as a legislative conduit for the Indian people of Montana;
- to improve the Indians' knowledge of the legislative process and the structure of state agencies;
- to encourage Indian participation in the committee's meetings;
- to seek opinions of and information from all interested persons and agencies regarding Indian/non-Indian relations;
- to encourage state-tribal cooperation; and
- when requested or considered appropriate, to hold hearings and to act as a negotiating body to facilitate agreements.

The Select Committee on Indian Affairs has received much support for this bill. For example, at the six reservation hearings, proponents to the bill included tribal councilmen, county commissioners, a county attorney, tribal police officers, representatives from MOD (Montanans Opposed to Discrimination), and others. The Committee believes that Merle Lucas provided excellent summary testimony as to the need for a legislative Indian Affairs Committee when he stated at the Blackfeet hearing:

We need legislators in the Montana Legislature who really understand the concerns of the Montana Indian tribes. And the only way I can see the legislators educating themselves on those concerns is to have the legislators meeting right here at the local level, with the tribes, listening to the concerns of the members of the tribes... Now I could go up there as a person and testify before a committee. But I'm

not going to educate those legislators. I think the real education they're going to get is by holding public meetings, such as this one. Then I think they're going to get a real diversified point of view of the concerns the Indian people really have.¹

In addition to comments made at Committee hearings, an endorsement for a permanent committee came from the 30th Annual Governor's Interstate Indian Council Conference, held in Kalispell on August 27-30, 1979. The resolution it adopted, attached as Appendix E, gave "support for the establishment of permanent tribal/state legislative committees...for developing and maintaining legislative awareness of jurisdictional-related problems of Indians and non-Indians...and [for maintaining] continuous open lines of negotiations and communications...."²

Lastly, the previous legislative interim Committee on Indian Legal Jurisdiction recognized the importance of continuity in state-tribal relations when it stated in its final report:

Indian jurisdiction-related problems will not be completely resolved in one or two or four years. They require ongoing attention with continuity of policy and personnel. The committee recommends to the 1979 Legislature a joint resolution creating a committee to further study and address itself to Indian problems....If that committee proves beneficial, it is the committee's recommendation to the 1981 Legislature that a permanent legislative committee on Indian affairs be established and given statutory status.³

Throughout the Committee hearings, only five participants spoke against the bill. The reasons for their opposition were: the belief that funding is not justified;⁴ fear of the word "permanent"; the belief that the state does not need more committees; the fear that the committee would not represent the Indians' interests; and the sentiment that a committee will not be of value unless there is more direct Indian involvement and inclusion of Indians on it. It should be mentioned that the latter concern, that of more direct Indian involvement on the committee, frequently was addressed by Indian and non-Indian participants, even those who generally indicated their support for the bill. The Select Committee decided, however, that it was important to keep the composition of the permanent committee as that of a legislative body.

¹Minutes of the hearing of the Select Committee on Indian Affairs' Subcommittee on the Blackfeet Reservation, Browning, July 31, 1980, p. 8.

²30th Annual Governors' Interstate Indian Council Conference, 1979 Annual Report, Montana Coordinator of Indian Affairs, Helena, p. 164.

³Robert C. Pyfer, Committee on Indian Legal Jurisdiction, A Report to the Forty-Sixth Legislature, Montana Legislative Council, January, 1979, p. 15.

⁴From the Committee's original budget of \$13,494.00, it spent \$7713.73 as of October 31, 1980.

It must be remembered that, because of the unique and limited role the state plays in tribal affairs, any work done by an Indian Affairs Committee stems from the voluntary desire for involvement on the part of the tribes. Thus, the Committee's performance can only be as successful as the response it receives from the interested communities. Clearly, the support received by the Committee for this bill, the large turnouts the Committee received at its hearings, and the discussions the Committee has witnessed regarding state-tribal cooperative agreements -- particularly when taken in the context of traditional state-tribal antipathy -- indicate that the Committee did prove to be successful and served a useful function in the work it performed during the interim.

APPENDIX A

47th Legislature

LC 0005/01

1 ----- BILL NO. -----
2 INTRODUCED BY -----
3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE PUBLIC
6 AGENCIES TO ENTER INTO COOPERATIVE AGREEMENTS WITH INDIAN
7 TRIBES LOCATED IN MONTANA; AMENDING SECTIONS 53-30-204 AND
8 87-1-228, MCA; AND REPEALING SECTION 20-3-333, MCA."
9

10 WHEREAS, it is in the best interest of the state of
11 Montana to establish a legal framework that will enable this
12 state, its political subdivisions, and Indian tribes to
13 achieve maximum harmony and facilitate cooperative efforts
14 in the orderly administration of their respective
15 governments; and

16 WHEREAS, it is in the best interest of the state of
17 Montana to establish a legal framework for viable agreements
18 between itself and tribal governments located in Montana
19 that are based on mutual consent and mutual benefit.

20 WHEREAS, it is in the best interest of the state of
21 Montana to permit public agencies to make the most efficient
22 use of their powers by enabling them to cooperate with
23 tribal governments on a basis of mutual benefit and thereby
24 provide services and facilities in a manner and pursuant to
25 forms of governmental organization that will accord best

1 with geographic, economic, population, and other factors
2 influencing the needs and development of public agencies and
3 local communities.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 NEW_SECTION. Section 1. Short title. [This act] shall
7 be known and may be cited as the "State-Tribal Cooperative
8 Agreements Act".

9 NEW_SECTION. Section 2. Definitions. As used in [this
10 act], unless the context clearly indicates otherwise, the
11 following definitions apply:

12 (1) "Public agency" means any political subdivision,
13 including municipalities, counties, school districts, and
14 any agency or department of the state of Montana.

15 (2) "Tribal government" means the officially
16 recognized government of any Indian tribe, nation, or other
17 organized group or community located in Montana exercising
18 self-government powers and recognized as eligible for
19 services provided by the United States to Indians because of
20 their status as Indians.

21 NEW_SECTION. Section 3. Authorization to enter
22 agreement -- general contents. (1) Any one or more public
23 agencies may enter into an agreement with any one or more
24 tribal governments to perform any administrative service,
25 activity, or undertaking that any of the public agencies or

1 tribal governments entering into the contract is authorized
2 by law to perform. The agreement shall be authorized and
3 approved by the governing body of each party to the
4 agreement.

5 (2) The agreement shall set forth fully the powers,
6 rights, obligations, and responsibilities of the parties to
7 the agreement.

8 ~~NEW SECTION.~~ Section 4. Detailed contents of
9 agreement. The agreement authorized by [section 3] shall
10 specify the following:

11 (1) its duration;

12 (2) the precise organization, composition, and nature
13 of any separate legal entity created thereby;

14 (3) the purpose of the agreement;

15 (4) the manner of financing the agreement and
16 establishing and maintaining a budget therefor;

17 (5) the method to be employed in accomplishing the
18 partial or complete termination of the agreement and for
19 disposing of property upon such partial or complete
20 termination;

21 (6) provision for administering the agreement, which
22 may include creation of a joint board responsible for such
23 administration;

24 (7) the manner of acquiring, holding, and disposing of
25 real and personal property used in the agreement;

1 (8) when an agreement involves law enforcement:

2 (a) the minimum training standards and qualifications
3 of law enforcement personnel;

4 (b) the respective liability of each public agency and
5 tribal government for the actions of law enforcement
6 officers when acting under the provisions of an agreement;

7 (c) the minimum insurance required of both the public
8 agency and the tribal government; and

9 (d) the exact chain of command to be followed by law
10 enforcement officers acting under the provisions of an
11 agreement; and

12 (9) any other necessary and proper matters.

13 ~~NEW SECTION.~~ Section 5. Submission of agreement to
14 attorney general. (1) As a condition precedent to an
15 agreement made under [this act] becoming effective, it must
16 have the approval of the attorney general of Montana.

17 (2) The attorney general shall approve an agreement
18 submitted to him under [this act] unless he finds it is not
19 in proper form or does not meet the requirements set forth
20 in [this act] or otherwise does not conform to the laws of
21 Montana. If he disapproves an agreement, he shall provide a
22 detailed, written statement to the governing bodies of the
23 public agency and tribal government concerned, specifying
24 the reasons for his disapproval.

25 (3) If the attorney general does not disapprove the

1 agreement within 30 days after its submission to him, it
2 shall be considered approved by him.

3 ~~NEW SECTION.~~ Section 6. Agreements by state agencies
4 -- requirements. As a condition precedent to an agreement
5 made under [this act] by a state agency becoming effective,
6 it must have, in addition to the approval of the attorney
7 general under [section 5], the approval of the governor.
8 The criteria and time for the governor's approval shall be
9 the same as that for the attorney general's approval as
10 provided in [section 5].

11 ~~NEW SECTION.~~ Section 7. Filing of agreement. Within
12 10 days after approval by the attorney general and prior to
13 commencement of its performance, an agreement made pursuant
14 to [this act] must be filed with:

15 (1) the secretary of the United States department of
16 the interior;

17 (2) each county clerk and recorder of each county
18 where the principal office of one of the parties to the
19 agreement is located;

20 (3) the secretary of state; and

21 (4) the affected tribal government.

22 ~~NEW SECTION.~~ Section 8. Revocation of agreement. An
23 agreement made pursuant to [this act] is subject to
24 revocation by any party upon 6 months' notice to the other
25 unless a different notice period of time is provided for

1 within the agreement. No agreement may provide for a notice
2 period for revocation in excess of 5 years.

3 NEW_SECTION. Section 9. Authorization to appropriate
4 funds for purpose of agreement. Any public agency entering
5 into an agreement pursuant to [this act] may appropriate
6 funds for and may sell, lease, or otherwise give or supply
7 material to any entity created for the purpose of
8 performance of the agreement and may provide such personnel
9 or services therefor as is within its legal power to
10 furnish.

11 NEW_SECTION. Section 10. Specific limitations on
12 agreements. Nothing in [this act] may be construed to
13 authorize an agreement that:

14 (1) enlarges or diminishes the jurisdiction over civil
15 or criminal matters that may be exercised by either the
16 state of Montana or tribal governments located in Montana;

17 (2) authorizes a public agency or tribal government,
18 either separately or pursuant to agreement, to expand or
19 diminish the jurisdiction presently exercised by the
20 government of the United States to make criminal laws for or
21 enforce criminal laws in Indian country;

22 (3) authorizes a public agency or tribal government to
23 enter into an agreement except as authorized by their own
24 organizational documents or enabling laws; or

25 (4) provides for the alienation, financial

1 encumbrance, or taxation of any real or personal property,
2 including water rights, belonging to any Indian or any
3 Indian tribe, band, or community that is held in trust by
4 the United States or is subject to a restriction against
5 alienation imposed by the United States.

6 NEW SECTION. Section 11. Validity of existing
7 agreements. (1) Except as provided in subsection (2),
8 [sections 1 through 10] do not effect the validity of any
9 agreement entered into between a tribe and a public agency
10 prior to July 1, 1981.

11 (2) However, any such agreement must satisfy the
12 requirements of [sections 1 through 10] no later than July
13 1, 1983.

14 Section 12. Section 53-30-204, MCA, is amended to
15 read:

16 "53-30-204. ~~Contracts~~ Cooperative agreements for
17 services with governing body of Indian reservation tribe.
18 (1) The department of institutions may ~~contract~~ enter into
19 ~~agreements~~ with the governing body of an Indian reservation
20 ~~tribe~~ within the state for residential and educational
21 services:

22 ~~(1)(a)~~ at Mountain View school, Pine Hills school,
23 aftercare division, or other juvenile facility maintained by
24 the department for children who have been adjudicated
25 delinquent by the tribal court, subject to the provisions of

1 this part and parts 1 and 2 of chapter 1; or

2 ~~(2)(b)~~ at the Montana children's center for children
3 who have been found by the tribal court to be dependent and
4 neglected, subject to the provisions of [Title 80, chapter
5 21].

6 ~~(2) Any agreement entered into under subsection (1)~~
7 ~~must also satisfy the requirements of [sections 1 through~~
8 ~~11]."~~

9 Section 13. Section 87-1-228, MCA, is amended to read:

10 "87-1-228. Agreement with Indians concerning hunting
11 and fishing -- Indian treaty of 1855. (1) Whereas, by treaty
12 of July 16, 1855, between the United States of America,
13 represented by Isaac I. Stephens, governor and
14 superintendent of Indian affairs for the territory of
15 Washington, and the chiefs, headmen, and delegates of the
16 confederated tribes of the Flathead, Kootenai, and Upper
17 Pend Oreille Indians, the said Indians were given the
18 exclusive right to fish and hunt on the Flathead Indian
19 reservation and the privilege of hunting in their usual
20 hunting grounds on large areas of Montana; and whereas,
21 nonmembers of such tribes have the right to hunt and fish on
22 Indian lands by sufferance of such tribes only; and whereas,
23 it appears to be to the common advantage of the state and
24 such Indian tribes that hunting and fishing regulations and
25 privileges on other lands of the state and on Indian lands

1 shall be uniform and that hunting and fishing on such Indian
2 lands shall be in common with the public, now, therefore,
3 the department may negotiate and conclude an agreement with
4 the council of the Confederated Salish and Kootenai tribes
5 of the Flathead Indian reservation for the purpose of:

6 (a) obtaining and establishing for the citizens of
7 Montana, regularly licensed to hunt and fish in the state,
8 the privileges of hunting and fishing on Indian lands on the
9 Flathead Indian reservation;

10 (b) the conservation and protection of fish and game
11 and fur-bearing animals on such Indian lands and on lands
12 adjacent thereto;

13 (c) setting dates for the opening and closing of
14 seasons for hunting and fishing on such lands for Indians
15 and non-Indians alike, opening and closing of streams and
16 land areas for hunting and fishing;

17 (d) doing what in its judgment is necessary by way of
18 granting to such tribal Indians state permits to hunt and
19 fish, to be issued without charge to such Indians;

20 (e) stocking streams and land areas of such Indian
21 lands for the common benefit;

22 (f) policing such Indian lands for the protection of
23 fish and game; and

24 (g) in general carrying out the purposes of this
25 section.

1 (2) If any part of such agreement provides for the
2 payment of money to the tribes, that part must first have
3 the approval of the state legislature.

4 ~~(3) Any agreement entered into under subsection (1)~~
5 ~~must also satisfy the requirements of [sections 1 through~~
6 ~~11]."~~

7 Section 14. Repealer. Section 20-3-333, MCA, is
8 repealed.

-End-

1 ----- BILL NO. -----

2 INTRODUCED BY -----

3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A PERMANENT
6 LEGISLATIVE COMMITTEE ON INDIAN AFFAIRS."

7
8 WHEREAS, there are seven Indian reservations and
9 numerous landless Indians in Montana; and

10 WHEREAS, the various tribes have treaties with the
11 United States which still require interpretation; and

12 WHEREAS, extremely complex jurisdictional, social,
13 political, and philosophical questions arise in virtually
14 all subject areas, including law enforcement, water rights,
15 pollution control, natural resources, game management,
16 health, social services, education, and taxation that in
17 turn produce tension and conflict in tribal/state and
18 Indian/non-Indian relations; and

19 WHEREAS, Congress, as the ultimate authority on
20 relations with the Indian tribes, has not been able to act
21 in a decisive manner to resolve these questions and is
22 unlikely to do so in the foreseeable future; and

23 WHEREAS, jurisdictional litigation on a case-by-case
24 basis is expensive to the state, tribes, and private
25 parties; and

1 WHEREAS, the jurisdictional, social, and philosophical
2 problems between Indians and non-Indians are historical and
3 cannot be expected to dissipate quickly; and

4 WHEREAS, the non-Indian people of Montana find it is to
5 their benefit to have a cooperative and communicative
6 liaison with the Indian people in Montana on a continuing
7 basis; and

8 WHEREAS, the Indian people in Montana have indicated it
9 is also to their benefit to have a legislative committee
10 with which to maintain such a cooperative and communicative
11 liaison.

12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Definitions. As used in [this act],
15 "committee" means the permanent committee on Indian affairs
16 created in [section 2].

17 Section 2. Committee on Indian affairs -- appointment
18 and composition. (1) There is a committee on Indian affairs.

19 (2) The committee consists of four members of the
20 senate, appointed by the president of the senate, and four
21 members of the house of representatives, appointed by the
22 speaker of the house. No more than two members from either
23 house may be members of the same party.

24 (3) Appointments must be made before final adjournment
25 of a regular session.

1 Section 3. Term of office. Appointments to the
2 committee are for 2 years. A member of the committee serves
3 until his term of office as a legislator is ended or his
4 successor is appointed, whichever occurs first.

5 Section 4. Vacancies. (1) A vacancy occurring during a
6 legislative session must be filled in the same manner as the
7 original appointment.

8 (2) A vacancy occurring when the legislature is not in
9 session must be filled by the selection of a member of the
10 appropriate house and political party by the remaining
11 members of the committee.

12 (3) An appointment to the committee under this section
13 is for the unexpired term of the original member.

14 Section 5. Officers. The committee shall elect one of
15 its members as chairman and may elect other officers it
16 considers necessary.

17 Section 6. Meetings and compensation. (1) The
18 committee shall meet as often as the chairman considers it
19 necessary during and between legislative sessions.

20 (2) Committee members are entitled to receive
21 compensation and expenses as provided in 5-2-302.

22 Section 7. Staff assistance. The legislative council
23 shall provide staff assistance to the committee. The
24 legislative council has the same authority of investigation
25 and examination and the same authority to hold hearings on

1 behalf of the committee as it has for other committees under
2 5-11-106 and 5-11-107.

3 Section 8. Duties of the committee. The committee
4 shall:

5 (1) act as an available conduit for the Indian people
6 to the legislature;

7 (2) seek opinions of and information from Indian
8 tribes, state agencies, local governments, non-Indians
9 living on or near Indian reservations, and other interested
10 persons and agencies to gain insight into Indian/non-Indian
11 relations;

12 (3) particularly encourage and foster participation
13 from Indian people at its meetings;

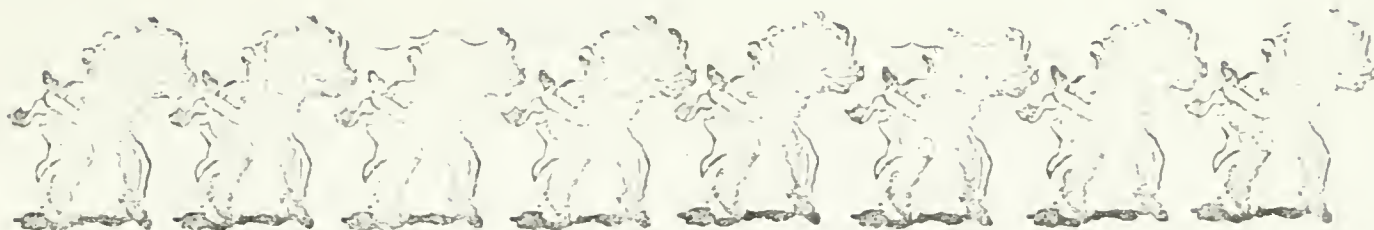
14 (4) study the possibility of state plans or mechanisms
15 that would allow and encourage tribal/state or tribal/local
16 government cooperation or otherwise promote solutions for
17 state/Indian and local/Indian jurisdictional, social, and
18 philosophical problems in Montana;

19 (5) when requested or when considered appropriate by
20 the committee, hold hearings and act as a negotiating body
21 to facilitate agreements and better understanding between
22 the tribes and public agencies;

23 (6) provide a continuing dialogue with the Indian
24 people of Montana in order to improve their knowledge of the
25 legislative process and the structure of state agencies; and

1 (7) report its activities, findings, recommendations,
2 and any proposed legislation to each legislature in a report
3 to be published not later than November 15 of each year
4 preceding a regular legislative session.

-End-



Montana Inter-Tribal Policy Board

OFFICERS

300 North 25th St., Suite 103 • Billings, MT 59101 • (406) 245-2228

CHAIRMAN
Tom Pablo
Flathead

RESOLUTION NO. 80-06

1ST VICE CHAIRMAN
Ed Yellowtail
Crow

WHEREAS: The Montana Inter-Tribal Policy Board has been organized to represent, develop, protect, and advance the views, interests, and resources of Indian People of the State of Montana; and

2ND VICE CHAIRMAN
Ivan Raining Bird
Rocky Boy

SECRETARY-TREASURER
Don Bishop
Little Shell

WHEREAS: the Juvenile Delinquency Committee (Law and Order) recommended to the MITPB that efforts be initiated to work with the State Select Committee on Indian Affairs for the purpose of developing legislation which would allow the State and Tribes to enter into Cross-Deputization agreements; and

MEMBER TRIBES

Blackfeet
Crow
Flathead
Fort Belknap
Fort Peck
Little Shell
Northern Cheyenne
Rocky Boy

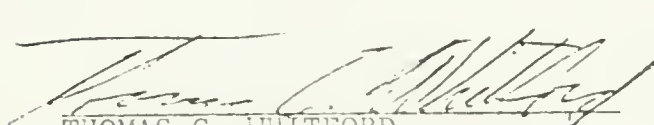
WHEREAS: the MITPB accepts the recommendation of its Juvenile Delinquency committee; NOW


THEREFORE BE IT RESOLVED:

The MITPB mandates itself to work with the Select Committee on Indian Affairs to prepare legislation which will allow Cross-Deputization between the State and Tribes on Law and Order matters.

C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was adopted by the Montana Inter-Tribal Policy Board during a duly called, noticed, and convened meeting held in Missoula, Montana on March 6, 1980 with five (5) tribes present constituting a quorum, all voting for.


THOMAS C. WHITFORD
Secretary Protempore
Montana Inter-Tribal Policy Board


THOMAS E. PABLO
Chairmen
Montana Inter-Tribal Policy Board

Calendar No. 809

96TH CONGRESS
2D SESSION

S. 1181

[Report No. 96-759]

To authorize the States and the Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country.

IN THE SENATE OF THE UNITED STATES

MAY 21 (legislative day, APRIL 9), 1979

Mr. DECONCINI (for himself, Mr. MCGOVERN, Mr. DOMENICI, Mr. BURDICK, Mr. MCCLURE, Mr. HATFIELD, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

MAY 15 (legislative day, JANUARY 3), 1980

Reported by Mr. MELCHER, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To authorize the States and the Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 That this Act may be cited as the "Tribal-State Compact Act
2 of ~~1979~~ 1980."

3 DECLARATION OF POLICY

4 SEC. 2. The Congress hereby declares that it is the
5 policy of this Nation to continue to preserve and protect the
6 tribes of the American Indian people. The policy of this
7 Nation is premised on the status of tribal governments as a
8 continuing part of the American political fabric. Accordingly,
9 the United States has a responsibility to establish a legal
10 framework which will enable the tribes and the States to
11 achieve maximum harmony and facilitate their cooperative
12 efforts in the orderly administration of their governments.
13 Federal enabling authority for the establishment of viable in-
14 tergovernmental agreements between the tribes and the
15 States based on mutual consent must be established.

16 DEFINITIONS

17 SEC. 3. For purposes of this Act:

18 (a) "~~Indian tribe~~" means any Indian tribe, band, nation,
19 or other organized group or community exercising powers of
20 self-government which is recognized as eligible for services
21 provided by the United States to Indians because of their
22 status as Indians, including any Alaska Native villages in-
23 cluded in the Alaska Native Claims Settlement Act (85 Stat.
24 688, 697).

(a) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native Village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688-689), which is exercising powers of self-government and which is recognized by the Secretary of the Interior as eligible for services provided by the United States to Indians because of their status as Indians.

9 (b) "State" means any of the States of the United
10 States, including cities, counties, municipalities, or other po-
11 litical subdivisions thereof.

(e) ~~“Secretary”~~ means the Secretary of the Department
of the Interior unless otherwise designated in this Act.

14 (c) “Secretary” means the Secretary of the Interior
15 unless otherwise designated in this Act.

(d) “Indian country” shall be defined in accordance with the provisions in section 1151 of title 18, United States Code.

19 TITLE I—AUTHORIZATION OF COMPACTS AND
20 AGREEMENTS

21 SEC. 101. (a) Notwithstanding the Act of August 15,
22 1953 (67 Stat. 588), as amended, or any other Act transfer-
23 ring civil or criminal jurisdiction over Indians within Indian
24 country from the United States to the various States, or es-
25 tablishing a procedure for such transfers, and notwithstand-

1 ing the provisions of any enabling Act for the admission of a
2 State into the Union, the consent of the United States is
3 hereby given the States and the Indian tribes and the same
4 are hereby authorized to enter into compacts and agreements
5 between ~~and among~~ themselves on matters relating to (1) the
6 enforcement or application of civil, criminal, and regulatory
7 laws of ~~each~~ *both* within their respective jurisdiction, and (2)
8 allocation or determination of governmental responsibility of
9 States and tribes over specified subject matters or specified
10 geographical areas, or both, including agreements or com-
11 pacts which provide for concurrent jurisdiction between the
12 States and the tribes, and (3) agreements or compacts which
13 provide for transfer of jurisdiction of individual cases from
14 tribal courts to State courts or State courts to tribal courts in
15 accordance with procedures established by the laws of the
16 tribes and States.

17 (b) Such agreements and compacts shall be subject to
18 revocation by either party upon six months written notice to
19 the other unless a different period of time is agreed upon. No
20 agreement may provide for a period for revocation in excess
21 of five years unless first approved by a majority of the adult
22 enrolled Indians within the affected area voting at a special
23 election as prescribed in ~~title IV,~~ section 406 of the Act of
24 April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), but such ap-

1 proval shall not curtail the right of the parties to revoke the
2 agreement by mutual consent within a shorter period of time.

3 (c) Agreements or compacts entered into under the pro-
4 vision of this section must be filed with the Secretary within
5 thirty days of consummation. In the event an agreement is
6 not so filed, it shall be subject to immediate revocation by
7 either party. The Secretary shall cause the jurisdictional pro-
8 visions of any such agreement, compact, or revocation to be
9 published in the Federal Register ~~unless requested other-~~
10 ~~wise by all parties to the agreement or compact.~~

11 (d) Such agreements, compacts, or revocation thereof
12 shall not affect any action ~~or proceeding over which a court~~
13 ~~has already assumed jurisdiction or proceeding which arose~~
14 *prior to the effective date of such an agreement, compact, or*
15 *revocation*, and no such action or proceeding shall abate by
16 reason of such agreement, compact, or revocation unless spe-
17 cifically agreed upon by all parties to any such action or pro-
18 ceedings and by the parties to the agreement or compact.

19 (e) Nothing in this Act shall be construed to: (1) enlarge
20 or diminish the jurisdiction over civil or criminal matters
21 which may be exercised by either State or tribal governments
22 except as expressly provided in this Act; (2) authorize or em-
23 power State or tribal governments, either separately or pur-
24 suant to agreement or compact, to expand or diminish the
25 jurisdiction presently exercised by the Government of the

1 United States to make ~~criminal laws for or enforce criminal~~
2 *criminal, civil, or regulatory laws for or enforce those* laws in
3 the Indian country; (3) authorize or empower the government
4 of a State or any of its political subdivisions or the govern-
5 ment of an Indian tribe from entering into agreements or
6 exercising jurisdiction except as authorized by their own or-
7 ganizational documents or enabling laws; (4) authorize agree-
8 ments or compacts which provide for the alienation, financial
9 encumbrance, or taxation of any real or personal property,
10 including water rights, belonging to any Indian or any Indian
11 tribe, band, or community that is held in trust by the United
12 States or is subject to a restriction against alienation imposed
13 by the United States; or (5) to enter into agreements or com-
14 pacts for the transfer of unlimited, unspecified, or general
15 civil and criminal jurisdiction of an Indian tribe, except as
16 provided under ~~title IV~~, section 406 of the Act of April 11,
17 1968 (82 Stat. 80; 25 U.S.C. 1326).

18 *(f) Nothing in this Act shall be construed as impairing*
19 *or restricting the right of the United States, States and*
20 *Indian tribes to enter into negotiations with each other with*
21 *respect to settlement of property rights arising from aborigi-*
22 *nal ownership, treaties or other Federal laws or judicial deci-*
23 *sions.*

1 FUNDING AND IMPLEMENTATION—FEDERAL ASSISTANCE

2 SEC. 102. (a) In any agreement or compact between an
3 Indian tribe and a State authorized under this Act, the
4 United States, upon agreement of the parties and the Secre-
5 tary, may provide financial assistance to such party for costs
6 of personnel or administrative expenses in an amount up to
7 100 per centum of costs actually incurred as a consequence
8 of such agreement or compact, including indirect costs of ad-
9 ministration which are clearly attributable to the services
10 performed under the agreement or compact. In determining
11 the amount of Federal assistance, if any, to be provided the
12 Secretary may consider among other things:

13 (1) Whether or not the party assuming an obliga-
14 tion under the agreement or compact is already
15 obligated or entitled to perform the function which is
16 the subject of the compact.

17 (2) Whether or not the Federal assistance will
18 cause or enable the contracting party to perform the
19 function at a standard above that which it is already
20 obligated to perform.

21 (3) The financial capacity of the contracting par-
22 ties to underwrite the expenses without Federal assist-
23 ance.

24 (4) The extent to which the success or failure of
25 the compact may depend upon Federal assistance.

1 (5) The extent to which the proposed compact or
2 agreement will contribute to fostering of community re-
3 lations between Indian and non-Indian communities.

4 (6) The extent to which the proposed compact or
5 agreement will enhance protection of resources of both
6 Indian and non-Indian communities.

7 (7) The comparative costs if the function which is
8 the subject of the compact or agreement were to be
9 performed by the United States.

10 (8) The extent to which Federal funding is al-
11 ready supplied through revenue sharing, grants in aid,
12 or other Federal program moneys.

13 (b) Whenever a party to such agreement or compact
14 seeks financial assistance from the United States, to offset
15 their costs, such party shall prepare a detailed statement of
16 the projected costs; a copy of such statement shall be sup-
17 plied to the other party; and the original of such statement
18 shall be supplied to the Secretary at the time said agreement
19 or compact is tendered to him for his approval.

20 (c) In any agreement or compact in which one of the
21 parties qualifies for Federal assistance, the other party shall
22 be supplied with copies of all vouchers for payment at the
23 time they are submitted and shall be fully informed of all
24 payments made by the United States to the recipient party.
25 In the event disputes arise between the parties, "either party

1 may request an audit. The books and records of the party
2 receiving Federal assistance which are relevant to the agree-
3 ment or compact shall be open to inspection by authorized
4 representatives of the United States.

5 (d) In the funding of governmental operations authorized
6 under this Act, the Secretary may enter into agreements or
7 other cooperative arrangements with any and all other Fed-
8 eral departments, agencies, bureaus, or other executive
9 branches for transfer of funds or contributions of funds appro-
10 priated for programs within the category of the functions to
11 be performed by the parties under such agreements or com-
12 pacts, and such departments, agencies, or bureaus are hereby
13 authorized to use such funds in the implementation of this
14 Act.

15 (e) All Federal departments, agencies, and other execu-
16 tive branches are authorized to provide technical assistance
17 and material support and assign personnel to aid tribal and
18 State authorities in the implementation of the agreements or
19 compacts they may enter into under the terms of this Act.

20 (f) The Secretary is hereby authorized to promulgate
21 such rules and regulations as may be necessary to carry out
22 the purposes of this Act.

23 (g) There are authorized to be appropriated such sums
24 as may be necessary during fiscal year 1981 not to exceed
25 \$10,000,000 and each subsequent fiscal year in order to

1 carry out the agreements or compacts entered into pursuant
2 to this title. Such funds shall be expended by the Secretary
3 only after determination that there are no funds available
4 from alternative sources as provided in subsection (d) of this
5 section. The Secretary shall provide for such records as may
6 be necessary for the accounting and justification of the funds
7 expended under this authorization.

8 TITLE II—PLANNING AND MONITORING BOARDS

9 SEC. 201. (a) The Secretary is hereby authorized and
10 directed to encourage the tribes and the States to establish
11 councils, committees, boards, or task forces comprised of rep-
12 resentatives of the States and individual tribes, or on a
13 statewide or regional basis, to discuss and confer upon juris-
14 dictional questions which exist between the parties, and to
15 provide Federal representatives ~~from his Department as may~~
16 ~~be used~~ at such conferences.

17 (b) In furtherance of this objective, the Secretary is au-
18 thorized and directed to provide adequate representation of
19 tribal members at such conferences, and such further confer-
20 ences among the tribes as may be necessary for their sepa-
21 rate deliberations, and to participate in the payments of ex-
22 penses in employment of reporters, transcription of state-
23 ments, and preparation of reports as ~~in his judgment~~ may be
24 appropriate.

1 (e) There are authorized to be appropriated not to
2 exceed \$1,000,000 during fiscal year 1981; and such sums
3 thereafter as may be necessary during each subsequent fiscal
4 year in order to carry out the purposes of this title.

5 (c) Beginning October 1, 1980, funds appropriated pur-
6 suant to the Act of November 21, 1921 (42 Stat. 208), may
7 be utilized for the purposes of this title.

8 TITLE III—JUDICIAL ENFORCEMENT

9 ~~SEC. 301. The United States district courts shall have~~
10 ~~original jurisdiction of any civil action brought by any party~~
11 ~~to an agreement or compact entered into in accordance with~~
12 ~~this Act to secure equitable relief, including injunctive and~~
13 ~~declaratory relief, for the enforcement of any such agreement~~
14 ~~or compact, but no action to recover damages arising out of~~
15 ~~or in connection with such agreement or compact shall lie~~
16 ~~except as specifically provided for in such agreement or~~
17 ~~compact.~~

18 *SEC. 301. Any party to an agreement or compact en-*
19 *tered into in accordance with this Act may bring a civil*
20 *action to secure equitable relief, including injunctive and de-*
21 *claratory relief, for the enforcement of any such agreement or*
22 *compact, but no action to recover damages arising out of or in*
23 *connection with such agreement or compact shall lie except as*
24 *specifically provided for in such agreement or compact. The*
25 *United States district courts shall have original jurisdiction*

1 *of any civil action authorized by this section. States and*
2 *Indian tribes, by entering into compacts or agreements in*
3 *accordance with this Act, shall be deemed to have consented*
4 *to suit with respect to the subject matter of such compacts or*
5 *agreements unless the agreement or compact specifically*
6 *states otherwise.*

APPENDIX E

RESOLUTION OF THE GOVERNORS' INTERSTATE INDIAN COUNCIL

WHEREAS; It's being recommended that the Governors' Interstate Indian Council express support for the establishment of permanent tribal/state legislative committees/councils/commissions for developing and maintaining legislative awareness of jurisdictional-related problems of Indians and non-Indians on and off the reservation and to maintain continuous open lines of negotiations and communications on jurisdictional questions, now

THEREFORE BE IT RESOLVED; that the Governors' Interstate Indian Council does hereby approve of the above recommendation.

BE IT FURTHER RESOLVED; that copies of this resolution be transmitted to the national Indian organizations and the National Governors' Association for their consideration and support.

Submitted By:
8-30-79



Caleb Shields
Tribal Councilman of the Assiniboine/Sioux
Tribes, Fort Peck Indian Reservation -
Billings Area Vice President for the
National Congress of American Indians

Motion by Merle Lucas (Montana) to approve, seconded by W. R. Richardson (North Carolina), carried.





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